

1 **OFFICE OF INSPECTOR GENERAL OF MEDICAID**

2 **SERVICES**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: David Clark**

6 Senate Sponsor: Wayne L. Niederhauser

8 **LONG TITLE**

9 **General Description:**

10 This bill creates, within the Governor's Office of Planning and Budget, the Office of
11 Inspector General of Medicaid Services.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ creates, within the Governor's Office of Planning and Budget, the Office of
16 Inspector General of Medicaid Services (office);
- 17 ▶ describes and provides for the qualifications, appointment, term of office, and
18 removal of the Inspector General of Medicaid Services (inspector general);
- 19 ▶ describes the duties and powers of the inspector general and the office;
- 20 ▶ requires the inspector general to enter into a memorandum of understanding with
21 the Medicaid Fraud Control Unit of the attorney general's office (fraud unit);
- 22 ▶ requires the office to annually select and review a representative sample of claims
23 submitted for reimbursement under the state Medicaid program to determine
24 whether fraud, waste, or abuse occurred;
- 25 ▶ provides for the transfer of full-time equivalents from the Department of Health to
26 the Governor's Office of Planning and Budget to staff the office;
- 27 ▶ establishes a process where the inspector general can order a hold on the payment of
28 a claim for reimbursement submitted by a claimant if there is reasonable cause to
29 believe that the claim, or payment of the claim, constitutes fraud, waste, or abuse, or

30 is otherwise inaccurate;

31 ▶ grants the office full access to records and employees when investigating or auditing
32 the use or expenditure of Medicaid funds or the provision of services;

33 ▶ grants the office access to the Controlled Substance Database and to all records,
34 information, and databases that the Department of Health and the Division of Health
35 Care Financing have access to;

36 ▶ requires the Department of Health, the Division of Health Care Financing, and
37 others to fully cooperate with and support the inspector general and the office in
38 fulfilling the duties of the inspector general and the office;

39 ▶ prohibits a person from interfering with or impeding an investigation or audit of the
40 office or fraud unit and from interfering with the content or conclusion of a report;

41 ▶ grants subpoena power to the inspector general;

42 ▶ requires a health care professional, a Medicaid provider, and a state or local
43 government official or employee to report any Medicaid fraud, waste, or abuse of
44 which they become aware;

45 ▶ requires the inspector general to, on an annual basis, prepare a written report on the
46 activities of the office for the preceding fiscal year, to provide the report to the
47 governor, and to provide and present the report to the Executive Appropriations
48 Committee of the Legislature;

49 ▶ requires the provision of contract services to the office by the attorney general's
50 office and the Division of Health Care Financing;

51 ▶ classifies certain records relating to an investigation or audit by the office as
52 protected;

53 ▶ grants rulemaking authority to the office; and

54 ▶ makes technical changes.

55 **Money Appropriated in this Bill:**

56 This bill appropriates, as ongoing appropriations:

57 ▶ to Department of Health - Executive Director's Operations:

- 58 • from the General Fund, \$(694,900);
- 59 • from the Federal Fund, \$(1,037,000); and
- 60 • from Revenue Transfers - Within Agency, \$(81,500);
- 61 ▶ to Medicaid Mandatory Services:
- 62 • from the General Fund, \$(300,000); and
- 63 • from the Federal Fund, \$(519,100); and
- 64 ▶ to Office of Inspector General of Medicaid Services:
- 65 • from the General Fund, \$994,900;
- 66 • from the Federal Fund, \$1,556,100; and
- 67 • from Revenue Transfers - Health, \$81,500.

68 **Other Special Clauses:**

69 This bill takes effect on July 1, 2011.

70 **Utah Code Sections Affected:**

71 AMENDS:

- 72 **26-18-2.3**, as last amended by Laws of Utah 2010, Chapter 149
- 73 **26-18-3**, as last amended by Laws of Utah 2010, Chapters 149, 323, 340, and 391
- 74 **58-37f-301**, as enacted by Laws of Utah 2010, Chapter 287 and last amended by
- 75 Coordination Clause, Laws of Utah 2010, Chapter 312
- 76 **63G-2-305**, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247
- 77 **63I-2-263**, as last amended by Laws of Utah 2010, Chapter 224
- 78 **63J-4-202**, as renumbered and amended by Laws of Utah 2008, Chapter 382

79 ENACTS:

- 80 **63J-4a-101**, Utah Code Annotated 1953
- 81 **63J-4a-102**, Utah Code Annotated 1953
- 82 **63J-4a-201**, Utah Code Annotated 1953
- 83 **63J-4a-202**, Utah Code Annotated 1953
- 84 **63J-4a-203**, Utah Code Annotated 1953
- 85 **63J-4a-204**, Utah Code Annotated 1953

- 86 **63J-4a-205**, Utah Code Annotated 1953
 - 87 **63J-4a-206**, Utah Code Annotated 1953
 - 88 **63J-4a-207**, Utah Code Annotated 1953
 - 89 **63J-4a-301**, Utah Code Annotated 1953
 - 90 **63J-4a-302**, Utah Code Annotated 1953
 - 91 **63J-4a-303**, Utah Code Annotated 1953
 - 92 **63J-4a-304**, Utah Code Annotated 1953
 - 93 **63J-4a-401**, Utah Code Annotated 1953
 - 94 **63J-4a-501**, Utah Code Annotated 1953
 - 95 **63J-4a-502**, Utah Code Annotated 1953
 - 96 **63J-4a-601**, Utah Code Annotated 1953
 - 97 **63J-4a-602**, Utah Code Annotated 1953
 - 98
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99 *Be it enacted by the Legislature of the state of Utah:*

100 Section 1. Section **26-18-2.3** is amended to read:

101 **26-18-2.3. Division responsibilities -- Emphasis -- Periodic assessment.**

102 (1) In accordance with the requirements of Title XIX of the Social Security Act and
103 applicable federal regulations, the division is responsible for the effective and impartial
104 administration of this chapter in an efficient, economical manner. The division shall:

105 (a) establish, on a statewide basis, a program to safeguard against unnecessary or
106 inappropriate use of Medicaid services, excessive payments, and unnecessary or inappropriate
107 hospital admissions or lengths of stay;

108 (b) deny any provider claim for services that fail to meet criteria established by the
109 division concerning medical necessity or appropriateness; and

110 (c) place its emphasis on high quality care to recipients in the most economical and
111 cost-effective manner possible, with regard to both publicly and privately provided services.

112 (2) The division shall implement and utilize cost-containment methods, where
113 possible, which may include:

- 114 (a) prepayment and postpayment review systems to determine if utilization is
- 115 reasonable and necessary;
- 116 (b) preadmission certification of nonemergency admissions;
- 117 (c) mandatory outpatient, rather than inpatient, surgery in appropriate cases;
- 118 (d) second surgical opinions;
- 119 (e) procedures for encouraging the use of outpatient services;
- 120 (f) consistent with Sections 26-18-2.4 and 58-17b-606, a Medicaid drug program;
- 121 (g) coordination of benefits; and
- 122 (h) review and exclusion of providers who are not cost effective or who have abused
- 123 the Medicaid program, in accordance with the procedures and provisions of federal law and
- 124 regulation.

125 (3) The director of the division shall periodically assess the cost effectiveness and

126 health implications of the existing Medicaid program, and consider alternative approaches to

127 the provision of covered health and medical services through the Medicaid program, in order to

128 reduce unnecessary or unreasonable utilization.

129 (4) The department shall ensure Medicaid program integrity by conducting internal

130 audits of the Medicaid program for efficiencies, best practices, fraud, waste, abuse, and cost

131 recovery[~~, at least in proportion to the percent of funding for the program that comes from state~~

132 ~~funds].~~

133 (5) The department shall, by December 31 of each year, report to the Health and

134 Human Services Appropriations Subcommittee regarding:

- 135 (a) measures taken under this section to increase:
- 136 (i) efficiencies within the program; and
- 137 (ii) cost avoidance and cost recovery efforts in the program; and
- 138 (b) results of program integrity efforts under Subsection (4).

139 Section 2. Section **26-18-3** is amended to read:

140 **26-18-3. Administration of Medicaid program by department -- Reporting to the**

141 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**

142 **standards -- Internal audits -- Studies -- Health opportunity accounts.**

143 (1) The department shall be the single state agency responsible for the administration
144 of the Medicaid program in connection with the United States Department of Health and
145 Human Services pursuant to Title XIX of the Social Security Act.

146 (2) (a) The department shall implement the Medicaid program through administrative
147 rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking
148 Act, the requirements of Title XIX, and applicable federal regulations.

149 (b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules
150 necessary to implement the program:

151 (i) the standards used by the department for determining eligibility for Medicaid
152 services;

153 (ii) the services and benefits to be covered by the Medicaid program; and

154 (iii) reimbursement methodologies for providers under the Medicaid program.

155 (3) (a) The department shall, in accordance with Subsection (3)(b), report to the Health
156 and Human Services Appropriations Subcommittee when the department:

157 (i) implements a change in the Medicaid State Plan;

158 (ii) initiates a new Medicaid waiver;

159 (iii) initiates an amendment to an existing Medicaid waiver;

160 (iv) applies for an extension of an application for a waiver or an existing Medicaid
161 waiver; or

162 (v) initiates a rate change that requires public notice under state or federal law.

163 (b) The report required by Subsection (3)(a) shall:

164 (i) be submitted to the Health and Human Services Appropriations Subcommittee prior
165 to the department implementing the proposed change; and

166 (ii) include:

167 (A) a description of the department's current practice or policy that the department is
168 proposing to change;

169 (B) an explanation of why the department is proposing the change;

170 (C) the proposed change in services or reimbursement, including a description of the
171 effect of the change;

172 (D) the effect of an increase or decrease in services or benefits on individuals and
173 families;

174 (E) the degree to which any proposed cut may result in cost-shifting to more expensive
175 services in health or human service programs; and

176 (F) the fiscal impact of the proposed change, including:

177 (I) the effect of the proposed change on current or future appropriations from the
178 Legislature to the department;

179 (II) the effect the proposed change may have on federal matching dollars received by
180 the state Medicaid program;

181 (III) any cost shifting or cost savings within the department's budget that may result
182 from the proposed change; and

183 (IV) identification of the funds that will be used for the proposed change, including any
184 transfer of funds within the department's budget.

185 (4) (a) The Department of Human Services shall report to the Legislative Health and
186 Human Services Appropriations Subcommittee no later than December 31, 2010 in accordance
187 with Subsection (4)(b).

188 (b) The report required by Subsection (4)(a) shall include:

189 (i) changes made by the division or the department beginning July 1, 2010 that effect
190 the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid
191 services or funding, that relate to care for children and youth in the custody of the Division of
192 Child and Family Services or the Division of Juvenile Justice Services;

193 (ii) the history and impact of the changes under Subsection (4)(b)(i);

194 (iii) the Department of Human Service's plans for addressing the impact of the changes
195 under Subsection (4)(b)(i); and

196 (iv) ways to consolidate administrative functions within the Department of Human
197 Services, the Department of Health, the Division of Child and Family Services, and the

198 Division of Juvenile Justice Services to more efficiently meet the needs of children and youth
199 with mental health and substance disorder treatment needs.

200 (5) Any rules adopted by the department under Subsection (2) are subject to review and
201 reauthorization by the Legislature in accordance with Section 63G-3-502.

202 (6) The department may, in its discretion, contract with the Department of Human
203 Services or other qualified agencies for services in connection with the administration of the
204 Medicaid program, including:

205 (a) the determination of the eligibility of individuals for the program;

206 (b) recovery of overpayments; and

207 (c) consistent with Section 26-20-13, and to the extent permitted by law and quality
208 control services, enforcement of fraud and abuse laws.

209 (7) The department shall provide, by rule, disciplinary measures and sanctions for
210 Medicaid providers who fail to comply with the rules and procedures of the program, provided
211 that sanctions imposed administratively may not extend beyond:

212 (a) termination from the program;

213 (b) recovery of claim reimbursements incorrectly paid; and

214 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

215 (8) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX
216 of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to
217 be used by the division in accordance with the requirements of Section 1919 of Title XIX of
218 the federal Social Security Act.

219 (9) (a) In determining whether an applicant or recipient is eligible for a service or
220 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department
221 shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle
222 designated by the applicant or recipient.

223 (b) Before Subsection (9)(a) may be applied:

224 (i) the federal government must:

225 (A) determine that Subsection (9)(a) may be implemented within the state's existing

226 public assistance-related waivers as of January 1, 1999;

227 (B) extend a waiver to the state permitting the implementation of Subsection (9)(a); or

228 (C) determine that the state's waivers that permit dual eligibility determinations for

229 cash assistance and Medicaid are no longer valid; and

230 (ii) the department must determine that Subsection (9)(a) can be implemented within

231 existing funding.

232 (10) (a) For purposes of this Subsection (10):

233 (i) "aged, blind, or disabled" shall be defined by administrative rule; and

234 (ii) "spend down" means an amount of income in excess of the allowable income

235 standard that must be paid in cash to the department or incurred through the medical services

236 not paid by Medicaid.

237 (b) In determining whether an applicant or recipient who is aged, blind, or disabled is

238 eligible for a service or benefit under this chapter, the department shall use 100% of the federal

239 poverty level as:

240 (i) the allowable income standard for eligibility for services or benefits; and

241 (ii) the allowable income standard for eligibility as a result of spend down.

242 (11) The department shall conduct internal audits of the Medicaid program[~~in~~

243 ~~proportion to at least the level of funding it receives from Medicaid to conduct internal audits].~~

244 (12) In order to determine the feasibility of contracting for direct Medicaid providers

245 for primary care services, the department shall:

246 (a) issue a request for information for direct contracting for primary services that shall

247 provide that a provider shall exclusively serve all Medicaid clients:

248 (i) in a geographic area;

249 (ii) for a defined range of primary care services; and

250 (iii) for a predetermined total contracted amount; and

251 (b) by February 1, 2011, report to the Health and Human Services Appropriations

252 Subcommittee on the response to the request for information under Subsection (12)(a).

253 (13) (a) By December 31, 2010, the department shall:

254 (i) determine the feasibility of implementing a three year patient-centered medical
255 home demonstration project in an area of the state using existing budget funds; and

256 (ii) report the department's findings and recommendations under Subsection (13)(a)(i)
257 to the Health and Human Services Appropriations Subcommittee.

258 (b) If the department determines that the medical home demonstration project
259 described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations
260 Subcommittee recommends that the demonstration project be implemented, the department
261 shall:

262 (i) implement the demonstration project; and

263 (ii) by December 1, 2012, make recommendations to the Health and Human Services
264 Appropriations Subcommittee regarding the:

265 (A) continuation of the demonstration project;

266 (B) expansion of the demonstration project to other areas of the state; and

267 (C) cost savings incurred by the implementation of the demonstration project.

268 (14) (a) The department may apply for and, if approved, implement a demonstration
269 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

270 (b) A health opportunity account established under Subsection (14)(a) shall be an
271 alternative to the existing benefits received by an individual eligible to receive Medicaid under
272 this chapter.

273 (c) Subsection (14)(a) is not intended to expand the coverage of the Medicaid program.

274 Section 3. Section **58-37f-301** is amended to read:

275 **58-37f-301. Access to database.**

276 (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
277 Administrative Rulemaking Act, to:

278 (a) effectively enforce the limitations on access to the database as described in this
279 part; and

280 (b) establish standards and procedures to ensure accurate identification of individuals
281 requesting information or receiving information without request from the database.

282 (2) The division shall make information in the database available only to the following
283 individuals, in accordance with the requirements of this chapter and division rules:

284 (a) personnel of the division specifically assigned to conduct investigations related to
285 controlled substance laws under the jurisdiction of the division;

286 (b) authorized division personnel engaged in analysis of controlled substance
287 prescription information as a part of the assigned duties and responsibilities of their
288 employment;

289 (c) in accordance with a written agreement entered into with the department,
290 employees of the Department of Health:

291 (i) whom the director of the Department of Health assigns to conduct scientific studies
292 regarding the use or abuse of controlled substances, provided that the identity of the individuals
293 and pharmacies in the database are confidential and are not disclosed in any manner to any
294 individual who is not directly involved in the scientific studies; or

295 (ii) when the information is requested by the Department of Health in relation to a
296 person whom the Department of Health suspects may be improperly obtaining or providing a
297 controlled substance;

298 (d) a licensed practitioner having authority to prescribe controlled substances, to the
299 extent the information:

300 (i) (A) relates specifically to a current or prospective patient of the practitioner; and
301 (B) is sought by the practitioner for the purpose of:

302 (I) prescribing or considering prescribing any controlled substance to the current or
303 prospective patient;

304 (II) diagnosing the current or prospective patient;

305 (III) providing medical treatment or medical advice to the current or prospective
306 patient; or

307 (IV) determining whether the current or prospective patient:

308 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;

309 or

310 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
311 substance from the practitioner;

312 (ii) (A) relates specifically to a former patient of the practitioner; and
313 (B) is sought by the practitioner for the purpose of determining whether the former
314 patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled
315 substance from the practitioner;

316 (iii) relates specifically to an individual who has access to the practitioner's Drug
317 Enforcement Administration identification number, and the practitioner suspects that the
318 individual may have used the practitioner's Drug Enforcement Administration identification
319 number to fraudulently acquire or prescribe a controlled substance;

320 (iv) relates to the practitioner's own prescribing practices, except when specifically
321 prohibited by the division by administrative rule;

322 (v) relates to the use of the controlled substance database by an employee of the
323 practitioner, described in Subsection (2)(e); or

324 (vi) relates to any use of the practitioner's Drug Enforcement Administration
325 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a
326 controlled substance;

327 (e) in accordance with Subsection (3)(a), an employee of a practitioner described in
328 Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:

329 (i) the employee is designated by the practitioner as an individual authorized to access
330 the information on behalf of the practitioner;

331 (ii) the practitioner provides written notice to the division of the identity of the
332 employee; and

333 (iii) the division:

334 (A) grants the employee access to the database; and
335 (B) provides the employee with a password that is unique to that employee to access
336 the database in order to permit the division to comply with the requirements of Subsection
337 58-37f-203(3)(b) with respect to the employee;

338 (f) a licensed pharmacist having authority to dispense a controlled substance to the
339 extent the information is sought for the purpose of:

340 (i) dispensing or considering dispensing any controlled substance; or

341 (ii) determining whether a person:

342 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

343 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
344 substance from the pharmacist;

345 (g) federal, state, and local law enforcement authorities, and state and local
346 prosecutors, engaged as a specified duty of their employment in enforcing laws:

347 (i) regulating controlled substances; or

348 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud;

349 (h) a mental health therapist, if:

350 (i) the information relates to a patient who is:

351 (A) enrolled in a licensed substance abuse treatment program; and

352 (B) receiving treatment from, or under the direction of, the mental health therapist as
353 part of the patient's participation in the licensed substance abuse treatment program described
354 in Subsection (2)(h)(i)(A);

355 (ii) the information is sought for the purpose of determining whether the patient is
356 using a controlled substance while the patient is enrolled in the licensed substance abuse
357 treatment program described in Subsection (2)(h)(i)(A); and

358 (iii) the licensed substance abuse treatment program described in Subsection
359 (2)(h)(i)(A) is associated with a practitioner who:

360 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
361 pharmacist; and

362 (B) is available to consult with the mental health therapist regarding the information
363 obtained by the mental health therapist, under this Subsection (2)(h), from the database; [and]

364 (i) an individual who is the recipient of a controlled substance prescription entered into
365 the database, upon providing evidence satisfactory to the division that the individual requesting

366 the information is in fact the individual about whom the data entry was made[-]; and
367 (j) the inspector general, or a designee of the inspector general, of the Office of
368 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
369 Title 63J, Chapter 4a, Part 2, Office Duties and Powers.

370 (3) (a) A practitioner described in Subsection (2)(d) may designate up to three
371 employees to access information from the database under Subsection (2)(e).

372 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
373 Administrative Rulemaking Act, to establish background check procedures to determine
374 whether an employee designated under Subsection (2)(e)(i) should be granted access to the
375 database.

376 (c) The division shall grant an employee designated under Subsection (2)(e)(i) access
377 to the database, unless the division determines, based on a background check, that the
378 employee poses a security risk to the information contained in the database.

379 (d) The division may impose a fee, in accordance with Section 63J-1-504, on a
380 practitioner who designates an employee under Subsection (2)(e)(i), to pay for the costs
381 incurred by the division to conduct the background check and make the determination
382 described in Subsection (3)(b).

383 (4) (a) An individual who is granted access to the database based on the fact that the
384 individual is a licensed practitioner or a mental health therapist shall be denied access to the
385 database when the individual is no longer licensed.

386 (b) An individual who is granted access to the database based on the fact that the
387 individual is a designated employee of a licensed practitioner shall be denied access to the
388 database when the practitioner is no longer licensed.

389 Section 4. Section **63G-2-305** is amended to read:

390 **63G-2-305. Protected records.**

391 The following records are protected if properly classified by a governmental entity:

392 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
393 has provided the governmental entity with the information specified in Section 63G-2-309;

394 (2) commercial information or nonindividual financial information obtained from a
395 person if:

396 (a) disclosure of the information could reasonably be expected to result in unfair
397 competitive injury to the person submitting the information or would impair the ability of the
398 governmental entity to obtain necessary information in the future;

399 (b) the person submitting the information has a greater interest in prohibiting access
400 than the public in obtaining access; and

401 (c) the person submitting the information has provided the governmental entity with
402 the information specified in Section 63G-2-309;

403 (3) commercial or financial information acquired or prepared by a governmental entity
404 to the extent that disclosure would lead to financial speculations in currencies, securities, or
405 commodities that will interfere with a planned transaction by the governmental entity or cause
406 substantial financial injury to the governmental entity or state economy;

407 (4) records the disclosure of which could cause commercial injury to, or confer a
408 competitive advantage upon a potential or actual competitor of, a commercial project entity as
409 defined in Subsection 11-13-103(4);

410 (5) test questions and answers to be used in future license, certification, registration,
411 employment, or academic examinations;

412 (6) records the disclosure of which would impair governmental procurement
413 proceedings or give an unfair advantage to any person proposing to enter into a contract or
414 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
415 Subsection (6) does not restrict the right of a person to have access to, once the contract or
416 grant has been awarded, a bid, proposal, or application submitted to or by a governmental
417 entity in response to:

418 (a) a request for bids;

419 (b) a request for proposals;

420 (c) a grant; or

421 (d) other similar document;

422 (7) records that would identify real property or the appraisal or estimated value of real
423 or personal property, including intellectual property, under consideration for public acquisition
424 before any rights to the property are acquired unless:

425 (a) public interest in obtaining access to the information outweighs the governmental
426 entity's need to acquire the property on the best terms possible;

427 (b) the information has already been disclosed to persons not employed by or under a
428 duty of confidentiality to the entity;

429 (c) in the case of records that would identify property, potential sellers of the described
430 property have already learned of the governmental entity's plans to acquire the property;

431 (d) in the case of records that would identify the appraisal or estimated value of
432 property, the potential sellers have already learned of the governmental entity's estimated value
433 of the property; or

434 (e) the property under consideration for public acquisition is a single family residence
435 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
436 the property as required under Section 78B-6-505;

437 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
438 compensated transaction of real or personal property including intellectual property, which, if
439 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
440 of the subject property, unless:

441 (a) the public interest in access outweighs the interests in restricting access, including
442 the governmental entity's interest in maximizing the financial benefit of the transaction; or

443 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
444 the value of the subject property have already been disclosed to persons not employed by or
445 under a duty of confidentiality to the entity;

446 (9) records created or maintained for civil, criminal, or administrative enforcement
447 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
448 release of the records:

449 (a) reasonably could be expected to interfere with investigations undertaken for

450 enforcement, discipline, licensing, certification, or registration purposes;

451 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
452 proceedings;

453 (c) would create a danger of depriving a person of a right to a fair trial or impartial
454 hearing;

455 (d) reasonably could be expected to disclose the identity of a source who is not
456 generally known outside of government and, in the case of a record compiled in the course of
457 an investigation, disclose information furnished by a source not generally known outside of
458 government if disclosure would compromise the source; or

459 (e) reasonably could be expected to disclose investigative or audit techniques,
460 procedures, policies, or orders not generally known outside of government if disclosure would
461 interfere with enforcement or audit efforts;

462 (10) records the disclosure of which would jeopardize the life or safety of an
463 individual;

464 (11) records the disclosure of which would jeopardize the security of governmental
465 property, governmental programs, or governmental recordkeeping systems from damage, theft,
466 or other appropriation or use contrary to law or public policy;

467 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
468 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
469 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

470 (13) records that, if disclosed, would reveal recommendations made to the Board of
471 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
472 Board of Pardons and Parole, or the Department of Human Services that are based on the
473 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
474 jurisdiction;

475 (14) records and audit workpapers that identify audit, collection, and operational
476 procedures and methods used by the State Tax Commission, if disclosure would interfere with
477 audits or collections;

478 (15) records of a governmental audit agency relating to an ongoing or planned audit
479 until the final audit is released;

480 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
481 litigation that are not available under the rules of discovery;

482 (17) records disclosing an attorney's work product, including the mental impressions or
483 legal theories of an attorney or other representative of a governmental entity concerning
484 litigation;

485 (18) records of communications between a governmental entity and an attorney
486 representing, retained, or employed by the governmental entity if the communications would be
487 privileged as provided in Section 78B-1-137;

488 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
489 from a member of the Legislature; and

490 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
491 legislative action or policy may not be classified as protected under this section; and

492 (b) (i) an internal communication that is part of the deliberative process in connection
493 with the preparation of legislation between:

494 (A) members of a legislative body;

495 (B) a member of a legislative body and a member of the legislative body's staff; or

496 (C) members of a legislative body's staff; and

497 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
498 legislative action or policy may not be classified as protected under this section;

499 (20) (a) records in the custody or control of the Office of Legislative Research and
500 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
501 legislation or contemplated course of action before the legislator has elected to support the
502 legislation or course of action, or made the legislation or course of action public; and

503 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
504 Office of Legislative Research and General Counsel is a public document unless a legislator
505 asks that the records requesting the legislation be maintained as protected records until such

506 time as the legislator elects to make the legislation or course of action public;

507 (21) research requests from legislators to the Office of Legislative Research and
508 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
509 in response to these requests;

510 (22) drafts, unless otherwise classified as public;

511 (23) records concerning a governmental entity's strategy about collective bargaining or
512 pending litigation;

513 (24) records of investigations of loss occurrences and analyses of loss occurrences that
514 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
515 Uninsured Employers' Fund, or similar divisions in other governmental entities;

516 (25) records, other than personnel evaluations, that contain a personal recommendation
517 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
518 personal privacy, or disclosure is not in the public interest;

519 (26) records that reveal the location of historic, prehistoric, paleontological, or
520 biological resources that if known would jeopardize the security of those resources or of
521 valuable historic, scientific, educational, or cultural information;

522 (27) records of independent state agencies if the disclosure of the records would
523 conflict with the fiduciary obligations of the agency;

524 (28) records of an institution within the state system of higher education defined in
525 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
526 retention decisions, and promotions, which could be properly discussed in a meeting closed in
527 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
528 the final decisions about tenure, appointments, retention, promotions, or those students
529 admitted, may not be classified as protected under this section;

530 (29) records of the governor's office, including budget recommendations, legislative
531 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
532 policies or contemplated courses of action before the governor has implemented or rejected
533 those policies or courses of action or made them public;

534 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
535 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
536 recommendations in these areas;

537 (31) records provided by the United States or by a government entity outside the state
538 that are given to the governmental entity with a requirement that they be managed as protected
539 records if the providing entity certifies that the record would not be subject to public disclosure
540 if retained by it;

541 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
542 except as provided in Section 52-4-206;

543 (33) records that would reveal the contents of settlement negotiations but not including
544 final settlements or empirical data to the extent that they are not otherwise exempt from
545 disclosure;

546 (34) memoranda prepared by staff and used in the decision-making process by an
547 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
548 other body charged by law with performing a quasi-judicial function;

549 (35) records that would reveal negotiations regarding assistance or incentives offered
550 by or requested from a governmental entity for the purpose of encouraging a person to expand
551 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
552 person or place the governmental entity at a competitive disadvantage, but this section may not
553 be used to restrict access to a record evidencing a final contract;

554 (36) materials to which access must be limited for purposes of securing or maintaining
555 the governmental entity's proprietary protection of intellectual property rights including patents,
556 copyrights, and trade secrets;

557 (37) the name of a donor or a prospective donor to a governmental entity, including an
558 institution within the state system of higher education defined in Section 53B-1-102, and other
559 information concerning the donation that could reasonably be expected to reveal the identity of
560 the donor, provided that:

561 (a) the donor requests anonymity in writing;

562 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
563 classified protected by the governmental entity under this Subsection (37); and

564 (c) except for an institution within the state system of higher education defined in
565 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
566 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
567 over the donor, a member of the donor's immediate family, or any entity owned or controlled
568 by the donor or the donor's immediate family;

569 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
570 73-18-13;

571 (39) a notification of workers' compensation insurance coverage described in Section
572 34A-2-205;

573 (40) (a) the following records of an institution within the state system of higher
574 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
575 or received by or on behalf of faculty, staff, employees, or students of the institution:

576 (i) unpublished lecture notes;

577 (ii) unpublished notes, data, and information:

578 (A) relating to research; and

579 (B) of:

580 (I) the institution within the state system of higher education defined in Section
581 53B-1-102; or

582 (II) a sponsor of sponsored research;

583 (iii) unpublished manuscripts;

584 (iv) creative works in process;

585 (v) scholarly correspondence; and

586 (vi) confidential information contained in research proposals;

587 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
588 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

589 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

590 (41) (a) records in the custody or control of the Office of Legislative Auditor General
591 that would reveal the name of a particular legislator who requests a legislative audit prior to the
592 date that audit is completed and made public; and

593 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
594 Office of the Legislative Auditor General is a public document unless the legislator asks that
595 the records in the custody or control of the Office of Legislative Auditor General that would
596 reveal the name of a particular legislator who requests a legislative audit be maintained as
597 protected records until the audit is completed and made public;

598 (42) records that provide detail as to the location of an explosive, including a map or
599 other document that indicates the location of:

600 (a) a production facility; or

601 (b) a magazine;

602 (43) information:

603 (a) contained in the statewide database of the Division of Aging and Adult Services
604 created by Section 62A-3-311.1; or

605 (b) received or maintained in relation to the Identity Theft Reporting Information
606 System (IRIS) established under Section 67-5-22;

607 (44) information contained in the Management Information System and Licensing
608 Information System described in Title 62A, Chapter 4a, Child and Family Services;

609 (45) information regarding National Guard operations or activities in support of the
610 National Guard's federal mission;

611 (46) records provided by any pawn or secondhand business to a law enforcement
612 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
613 Secondhand Merchandise Transaction Information Act;

614 (47) information regarding food security, risk, and vulnerability assessments performed
615 by the Department of Agriculture and Food;

616 (48) except to the extent that the record is exempt from this chapter pursuant to Section
617 63G-2-106, records related to an emergency plan or program prepared or maintained by the

618 Division of Homeland Security the disclosure of which would jeopardize:
619 (a) the safety of the general public; or
620 (b) the security of:
621 (i) governmental property;
622 (ii) governmental programs; or
623 (iii) the property of a private person who provides the Division of Homeland Security
624 information;
625 (49) records of the Department of Agriculture and Food relating to the National
626 Animal Identification System or any other program that provides for the identification, tracing,
627 or control of livestock diseases, including any program established under Title 4, Chapter 24,
628 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
629 Quarantine;
630 (50) as provided in Section 26-39-501:
631 (a) information or records held by the Department of Health related to a complaint
632 regarding a child care program or residential child care which the department is unable to
633 substantiate; and
634 (b) information or records related to a complaint received by the Department of Health
635 from an anonymous complainant regarding a child care program or residential child care;
636 (51) unless otherwise classified as public under Section 63G-2-301 and except as
637 provided under Section 41-1a-116, an individual's home address, home telephone number, or
638 personal mobile phone number, if:
639 (a) the individual is required to provide the information in order to comply with a law,
640 ordinance, rule, or order of a government entity; and
641 (b) the subject of the record has a reasonable expectation that this information will be
642 kept confidential due to:
643 (i) the nature of the law, ordinance, rule, or order; and
644 (ii) the individual complying with the law, ordinance, rule, or order;
645 (52) the name, home address, work addresses, and telephone numbers of an individual

646 that is engaged in, or that provides goods or services for, medical or scientific research that is:

647 (a) conducted within the state system of higher education, as defined in Section
648 53B-1-102; and

649 (b) conducted using animals;

650 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
651 Private Proposal Program, to the extent not made public by rules made under that chapter;

652 (54) information collected and a report prepared by the Judicial Performance
653 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
654 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
655 the information or report;

656 (55) (a) records of the Utah Educational Savings Plan created under Section
657 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

658 (b) proposals submitted to the Utah Educational Savings Plan; and

659 (c) contracts entered into by the Utah Educational Savings Plan and the related
660 payments;

661 (56) records contained in the Management Information System created in Section
662 62A-4a-1003;

663 (57) records provided or received by the Public Lands Policy Coordinating Office in
664 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

665 (58) information requested by and provided to the Utah State 911 Committee under
666 Section 53-10-602;

667 (59) recorded Children's Justice Center investigative interviews, both video and audio,
668 the release of which are governed by Section 77-37-4; ~~and~~

669 (60) in accordance with Section 73-10-33:

670 (a) a management plan for a water conveyance facility in the possession of the Division
671 of Water Resources or the Board of Water Resources; or

672 (b) an outline of an emergency response plan in possession of the state or a county or
673 municipality[-];

674 (61) the following records in the custody or control of the Office of Inspector General
675 of Medicaid Services, created in Section 63J-4a-201:

676 (a) records that would disclose information relating to allegations of personal
677 misconduct, gross mismanagement, or illegal activity of a person if the information or
678 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
679 through other documents or evidence, and the records relating to the allegation are not relied
680 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
681 report or final audit report;

682 (b) records and audit workpapers to the extent they would disclose the identity of a
683 person who, during the course of an investigation or audit, communicated the existence of any
684 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
685 regulation adopted under the laws of this state, a political subdivision of the state, or any
686 recognized entity of the United States, if the information was disclosed on the condition that
687 the identity of the person be protected;

688 (c) before the time that an investigation or audit is completed and the final
689 investigation or final audit report is released, records or drafts circulated to a person who is not
690 an employee or head of a governmental entity for the person's response or information;

691 (d) records that would disclose an outline or part of any investigation, audit survey
692 plan, or audit program; or

693 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
694 investigation or audit; and

695 (62) records that reveal methods used by the Office of Inspector General of Medicaid
696 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or
697 abuse.

698 Section 5. Section **63I-2-263** is amended to read:

699 **63I-2-263. Repeal dates, Title 63A to Title 63M.**

700 (1) Subsection 63G-1-401(5) is repealed on May 10, 2011.

701 (2) Sections 63J-4a-206 and 63J-4a-207 are repealed on December 31, 2011.

702 Section 6. Section **63J-4-202** is amended to read:

703 **63J-4-202. Appointment of director, state planning coordinator, and inspector**
704 **general of Medicaid Services.**

705 (1) (a) The governor shall appoint, to serve at the governor's pleasure:

706 (i) a director of the Governor's Office of Planning and Budget; and

707 (ii) a state planning coordinator.

708 (b) The state planning coordinator is considered part of the office for purposes of
709 administration.

710 (2) The governor shall establish the director's salary within the salary range fixed by
711 the Legislature in Title 67, Chapter 22, State Officer Compensation.

712 (3) (a) In accordance with Section 63J-4a-201, the governor shall appoint, with the
713 advice and consent of the Senate, the inspector general of the Office of Inspector General of
714 Medicaid Services.

715 (b) The Office of Inspector General of Medicaid Services is considered part of the
716 office for purposes of administration.

717 Section 7. Section **63J-4a-101** is enacted to read:

718 **CHAPTER 4a. OFFICE OF INSPECTOR GENERAL OF MEDICAID SERVICES**

719 **Part 1. General Provisions**

720 **63J-4a-101. Title.**

721 This chapter is known as "Office of Inspector General of Medicaid Services."

722 Section 8. Section **63J-4a-102** is enacted to read:

723 **63J-4a-102. Definitions.**

724 As used in this chapter:

725 (1) "Abuse" means:

726 (a) an action or practice that:

727 (i) is inconsistent with sound fiscal, business, or medical practices; and

728 (ii) results, or may result, in unnecessary Medicaid related costs; or

729 (b) reckless or negligent upcoding.

- 730 (2) "Claimant" means a person that:
- 731 (a) provides a service; and
- 732 (b) submits a claim for Medicaid reimbursement for the service.
- 733 (3) "Department" means the Department of Health, created in Section 26-1-4.
- 734 (4) "Division" means the Division of Health Care Financing, created in Section
- 735 26-18-2.1.
- 736 (5) "Fraud" means intentional or knowing:
- 737 (a) deception, misrepresentation, or upcoding in relation to Medicaid funds, costs, a
- 738 claim, reimbursement, or services; or
- 739 (b) a violation of a provision of Subsections 26-20-3 through 26-20-7.
- 740 (6) "Fraud unit" means the Medicaid Fraud Control Unit of the attorney general's
- 741 office.
- 742 (7) "Health care professional" means a person licensed under:
- 743 (a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;
- 744 (b) Title 58, Chapter 16a, Utah Optometry Practice Act;
- 745 (c) Title 58, Chapter 17b, Pharmacy Practice Act;
- 746 (d) Title 58, Chapter 24b, Physical Therapy Practice Act;
- 747 (e) Title 58, Chapter 31b, Nurse Practice Act;
- 748 (f) Title 58, Chapter 40, Recreational Therapy Practice Act;
- 749 (g) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act;
- 750 (h) Title 58, Chapter 42a, Occupational Therapy Practice Act;
- 751 (i) Title 58, Chapter 44a, Nurse Midwife Practice Act;
- 752 (j) Title 58, Chapter 49, Dietitian Certification Act;
- 753 (k) Title 58, Chapter 60, Mental Health Professional Practice Act;
- 754 (l) Title 58, Chapter 67, Utah Medical Practice Act;
- 755 (m) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- 756 (n) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
- 757 (o) Title 58, Chapter 70a, Physician Assistant Act; and

758 (p) Title 58, Chapter 73, Chiropractic Physician Practice Act.

759 (8) "Inspector general" means the inspector general of the office, appointed under
760 Section 63J-4a-201.

761 (9) "Office" means the Office of Inspector General of Medicaid Services, created in
762 Section 63J-4a-201.

763 (10) "Provider" means a person that provides:

764 (a) medical assistance, including supplies or services, in exchange, directly or
765 indirectly, for Medicaid funds; or

766 (b) billing or recordkeeping services relating to Medicaid funds.

767 (11) "Upcoding" means assigning an inaccurate billing code for a service that is
768 payable or reimbursable by Medicaid funds, if the correct billing code for the service, taking
769 into account reasonable opinions derived from official published coding definitions, would
770 result in a lower Medicaid payment or reimbursement.

771 (12) "Waste" means overutilization of resources or inappropriate payment.

772 Section 9. Section **63J-4a-201** is enacted to read:

773 **Part 2. Office Duties and Powers**

774 **63J-4a-201. Creation of office -- Inspector general -- Appointment -- Term.**

775 (1) There is created, within the Governor's Office of Planning and Budget, the Office
776 of Inspector General of Medicaid Services.

777 (2) The governor shall appoint the inspector general, with the advice and consent of the
778 Senate.

779 (3) A person appointed as the inspector general shall:

780 (a) be a certified public accountant or a certified internal auditor; and

781 (b) have the following qualifications:

782 (i) a general knowledge of the type of methodology and controls necessary to audit,
783 investigate, and identify fraud, waste, and abuse;

784 (ii) strong management skills;

785 (iii) extensive knowledge of, and at least seven years experience with, performance

786 audit methodology;

787 (iv) the ability to oversee and execute an audit; and

788 (v) strong interpersonal skills.

789 (4) The inspector general:

790 (a) shall serve a term of two years; and

791 (b) may be removed by the governor, for cause.

792 (5) If the inspector general is removed for cause, a new inspector general shall be

793 appointed, with the advice and consent of the Senate, to serve a two-year term.

794 Section 10. Section **63J-4a-202** is enacted to read:

795 **63J-4a-202. Duties and powers of inspector general and office.**

796 (1) The inspector general shall:

797 (a) administer, direct, and manage the office;

798 (b) inspect and monitor the following in relation to the state Medicaid program:

799 (i) the use and expenditure of federal and state funds;

800 (ii) the provision of health benefits and other services;

801 (iii) implementation of, and compliance with, state and federal requirements; and

802 (iv) records and recordkeeping procedures;

803 (c) receive reports of potential fraud, waste, or abuse in the state Medicaid program;

804 (d) investigate and identify potential or actual fraud, waste, or abuse in the state

805 Medicaid program;

806 (e) consult with the Centers for Medicaid and Medicare Services and other states to

807 determine and implement best practices for discovering and eliminating fraud, waste, and

808 abuse of Medicaid funds;

809 (f) obtain, develop, and utilize computer algorithms to identify fraud, waste, or abuse

810 in the state Medicaid program;

811 (g) work closely with the fraud unit to identify and recover improperly or fraudulently

812 expended Medicaid funds;

813 (h) audit, inspect, and evaluate the functioning of the division to ensure that the state

814 Medicaid program is managed in the most efficient and cost-effective manner possible;

815 (i) regularly advise the department and the division of an action that should be taken to
816 ensure that the state Medicaid program is managed in the most efficient and cost-effective
817 manner possible;

818 (j) refer potential criminal conduct, relating to Medicaid funds or the state Medicaid
819 program, to the fraud unit;

820 (k) determine ways to:

821 (i) identify, prevent, and reduce fraud, waste, and abuse in the state Medicaid program;
822 and

823 (ii) recoup costs, reduce costs, and avoid or minimize increased costs of the state
824 Medicaid program;

825 (l) seek recovery of improperly paid Medicaid funds;

826 (m) track recovery of Medicaid funds by the state;

827 (n) in accordance with Section 63J-4a-501:

828 (i) report on the actions and findings of the inspector general; and

829 (ii) make recommendations to the Legislature and the governor;

830 (o) provide training to agencies and employees on identifying potential fraud, waste, or
831 abuse of Medicaid funds; and

832 (p) develop and implement principles and standards for the fulfillment of the duties of
833 the inspector general, based on principles and standards used by:

834 (i) the Federal Offices of Inspector General;

835 (ii) the Association of Inspectors General; and

836 (iii) the United States Government Accountability Office.

837 (2) The office may conduct a performance or financial audit of:

838 (a) a state executive branch entity or a local government entity, including an entity
839 described in Subsection 63J-4a-301(3), that:

840 (i) manages or oversees a state Medicaid program; or

841 (ii) manages or oversees the use or expenditure of state or federal Medicaid funds; or

842 (b) Medicaid funds received by a person by a grant from, or under contract with, a state
843 executive branch entity or a local government entity.

844 (3) The inspector general, or a designee of the inspector general within the office, may
845 take a sworn statement or administer an oath.

846 Section 11. Section **63J-4a-203** is enacted to read:

847 **63J-4a-203. Memorandum of understanding with fraud unit.**

848 The inspector general shall enter into a memorandum of understanding with the fraud
849 unit to:

850 (1) formalize communication, cooperation, coordination of efforts, and the sharing of
851 information, on a regular basis, between the office and the fraud unit;

852 (2) provide for reporting criminal activity discovered by the office to the fraud unit;

853 (3) ensure that investigations and other actions by the office and the fraud unit do not
854 conflict; and

855 (4) provide for the sharing and classification of records between the office and the
856 fraud unit under the Government Records Access and Management Act.

857 Section 12. Section **63J-4a-204** is enacted to read:

858 **63J-4a-204. Selection and review of claims.**

859 (1) On an annual basis, the office shall select and review a representative sample of
860 claims submitted for reimbursement under the state Medicaid program to determine whether
861 fraud, waste, or abuse occurred.

862 (2) The office may directly contact the recipient of record for a Medicaid reimbursed
863 service to determine whether the service for which reimbursement was claimed was actually
864 provided to the recipient of record.

865 (3) The office shall generate statistics from the sample described in Subsection (1) to
866 determine the type of fraud, waste, or abuse that is most advantageous to focus on in future
867 audits or investigations.

868 Section 13. Section **63J-4a-205** is enacted to read:

869 **63J-4a-205. Placement of hold on claims for reimbursement -- Injunction.**

870 (1) The inspector general or the inspector general's designee may, without prior notice,
871 order a hold on the payment of a claim for reimbursement submitted by a claimant if there is
872 reasonable cause to believe that the claim, or payment of the claim, constitutes fraud, waste, or
873 abuse, or is otherwise inaccurate.

874 (2) The office shall, within seven days after the day on which a hold described in
875 Subsection (1) is ordered, notify the claimant that the hold has been placed.

876 (3) The inspector general or the inspector general's designee may not maintain a hold
877 longer than is necessary to determine whether the claim, or payment of the claim, constitutes
878 fraud, waste, or abuse, or is otherwise inaccurate.

879 (4) A claimant may, at any time during which a hold is in place, appeal the hold under
880 Title 63G, Chapter 4, Administrative Procedures Act.

881 (5) If a claim is approved or denied before a hearing is held under Title 63G, Chapter 4,
882 Administrative Procedures Act, the appeal shall be dismissed as moot.

883 (6) The inspector general may request that the attorney general's office seek an
884 injunction to prevent a person from disposing of an asset that is potentially subject to recovery
885 by the state to recover funds due to a person's fraud or abuse.

886 (7) The department and the division shall fully comply with a hold ordered under this
887 section.

888 Section 14. Section **63J-4a-206** is enacted to read:

889 **63J-4a-206. Transfer of full-time equivalents to staff office.**

890 The office shall be staffed by transferring from the Office of Internal Audit and
891 Program Integrity to the office all full-time equivalents for the following positions, as they
892 existed and were organized within the Office of Internal Audit and Program Integrity on
893 September 28, 2010, as shown in Appendix B of the Performance Audit of Utah Medicaid
894 Provider Cost Control, dated December 2010 and published by the Office of the Legislative
895 Auditor General:

896 (1) the director of the Office of Internal Audit and Program Integrity;

897 (2) the executive secretary to the director of the Office of Internal Audit and Program

898 Integrity:

899 (3) two positions of program manager of Program Integrity Post Payment Review;

900 (4) all positions under the positions described in Subsection (3), including:

901 (a) four RN III positions;

902 (b) the position of RN III that was vacant on September 28, 2010;

903 (c) the position of office specialist I that was vacant on September 28, 2010;

904 (d) doctor (0.2 FTE);

905 (e) two positions of doctor (0.5 FTE each);

906 (f) data HPS III;

907 (g) the position of data HPS II that was vacant on September 28, 2010;

908 (h) collections HPS II;

909 (i) PERM Lead;

910 (j) PERM HPS II; and

911 (k) PERM HPS II;

912 (5) the audit manager (performance audit); and

913 (6) all positions under the position described in Subsection (5), including:

914 (a) two positions of Lead Auditor;

915 (b) two positions of Auditor II, including the one that was vacant on September 28,

916 2010; and

917 (c) OIAS Support.

918 Section 15. Section **63J-4a-207** is enacted to read:

919 **63J-4a-207. Filling of transferred positions.**

920 The executive director of the department and the inspector general shall meet to

921 determine which individuals, if any, who currently hold the positions represented by the

922 full-time equivalents described in Section 63J-4a-206, will fill positions in the office. Any

923 disagreement regarding transferring of personnel shall be resolved by the governor.

924 Section 16. Section **63J-4a-301** is enacted to read:

925 **Part 3. Investigation or Audit**

926 **63J-4a-301. Access to records -- Retention of designation under Government**
927 **Records Access and Management Act.**

928 (1) In order to fulfill the duties described in Section 63J-4a-202, the office shall have
929 unrestricted access to all records of state executive branch entities, all local government
930 entities, and all providers relating, directly or indirectly, to:

- 931 (a) the state Medicaid program;
932 (b) state or federal Medicaid funds;
933 (c) the provision of Medicaid related services;
934 (d) the regulation or management of any aspect of the state Medicaid program;
935 (e) the use or expenditure of state or federal Medicaid funds;
936 (f) suspected or proven fraud, waste, or abuse of state or federal Medicaid funds;
937 (g) Medicaid program policies, practices, and procedures;
938 (h) monitoring of Medicaid services or funds; or
939 (i) a fatality review of a person who received Medicaid funded services.

940 (2) The office shall have access to information in any database maintained by the state
941 or a local government to verify identity, income, employment status, or other factors that affect
942 eligibility for Medicaid services.

943 (3) The records described in Subsections (1) and (2) include records held or maintained
944 by the department, the division, the Department of Human Services, the Department of
945 Workforce Services, a local health department, a local mental health authority, or a school
946 district. The records described in Subsection (1) include records held or maintained by a
947 provider. When conducting an audit of a provider, the office shall, to the extent possible, limit
948 the records accessed to the scope of the audit.

949 (4) A record, described in Subsection (1) or (2), that is accessed or copied by the
950 office:

- 951 (a) may be reviewed or copied by the office during normal business hours; and
952 (b) if it is a government record, shall retain the classification made by the entity
953 responsible for the record, under Title 63G, Chapter 2, Government Records Access and

954 Management Act.

955 (5) Notwithstanding any provision of state law to the contrary, the office shall have the
956 same access to all records, information, and databases that the department or the division have
957 access to.

958 (6) The office shall comply with the requirements of federal law, including the Health
959 Insurance Portability and Accountability Act of 1996 and 42 C.F.R., Part 2, relating to the
960 confidentiality of alcohol and drug abuse records, in the office's:

- 961 (a) access, review, retention, and use of records; and
- 962 (b) use of information included in, or derived from, records.

963 Section 17. Section **63J-4a-302** is enacted to read:

964 **63J-4a-302. Access to employees -- Cooperating with investigation or audit.**

965 (1) The office shall have access to interview the following persons if the inspector
966 general determines that the interview may assist the inspector general in fulfilling the duties
967 described in Section 63J-4a-202:

- 968 (a) a state executive branch official, executive director, director, or employee;
- 969 (b) a local government official or employee;
- 970 (c) a consultant or contractor of a person described in Subsection (1)(a) or (b); or
- 971 (d) a provider or an employee of a provider.

972 (2) A person described in Subsection (1) and each supervisor of the person shall fully
973 cooperate with the office by:

974 (a) providing the office or the inspector general's designee with access to interview the
975 person;

976 (b) completely and truthfully answering questions asked by the office or the inspector
977 general's designee;

978 (c) providing the records, described in Subsection 63J-4a-301(1), requested by the
979 office or the inspector general's designee; and

980 (d) providing the office or the inspector general's designee with information relating to
981 the office's investigation or audit.

982 (3) A person described in Subsection (1)(a) or (b) and each supervisor of the person
983 shall fully cooperate with the office by:

984 (a) providing records requested by the office or the inspector general's designee; and

985 (b) providing the office or the inspector general's designee with information relating to
986 the office's investigation or audit, including information that is classified as private, controlled,
987 or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

988 Section 18. Section **63J-4a-303** is enacted to read:

989 **63J-4a-303. Cooperation and support.**

990 The department, the division, each consultant or contractor of the department or
991 division, and each provider shall provide its full cooperation and support to the inspector
992 general and the office in fulfilling the duties of the inspector general and the office.

993 Section 19. Section **63J-4a-304** is enacted to read:

994 **63J-4a-304. Interference with an investigation or audit prohibited.**

995 No person may:

996 (1) interfere with or impede an investigation or audit of the office or fraud unit; or

997 (2) interfere with the office relative to the content of a report, the conclusions reached
998 in a report, or the manner of disclosing the results and findings of the office.

999 Section 20. Section **63J-4a-401** is enacted to read:

1000 **Part 4. Subpoena Power**

1001 **63J-4a-401. Subpoena power -- Enforcement.**

1002 (1) The inspector general has the power to issue a subpoena to obtain a record or
1003 interview a person that the office or inspector general has the right to access under Part 3,
1004 Investigation or Audit.

1005 (2) A person who fails to comply with a subpoena issued by the inspector general or
1006 who refuses to testify regarding a matter upon which the person may be lawfully interrogated:

1007 (a) is in contempt of the inspector general; and

1008 (b) upon request by the inspector general, the attorney general shall:

1009 (i) file a motion for an order to compel obedience to the subpoena with the district

1010 court;

1011 (ii) file, with the district court, a motion for an order to show cause why the penalties
1012 established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person
1013 named in the subpoena for contempt of the inspector general; or

1014 (iii) pursue other legal remedies against the person.

1015 (3) Upon receipt of a motion under Subsection (2), the court:

1016 (a) shall expedite the hearing and decision on the motion; and

1017 (b) may:

1018 (i) order the person named in the subpoena to comply with the subpoena; and

1019 (ii) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon
1020 the person named in the subpoena for contempt of the inspector general.

1021 (4) (a) If a subpoena described in this section requires the production of accounts,
1022 books, papers, documents, or other tangible items, the person or entity to whom it is directed
1023 may petition a district court to quash or modify the subpoena at or before the time specified in
1024 the subpoena for compliance.

1025 (b) The inspector general may respond to a motion to quash or modify the subpoena by
1026 pursuing any remedy authorized by Subsection (3).

1027 (c) If the court finds that a subpoena requiring the production of accounts, books,
1028 papers, documents, or other tangible items is unreasonable or oppressive, the court may quash
1029 or modify the subpoena.

1030 (5) Nothing in this section prevents the inspector general from seeking an extraordinary
1031 writ to remedy contempt of the inspector general.

1032 (6) Any party aggrieved by a decision of a court under this section may appeal that
1033 decision directly to the Utah Supreme Court.

1034 Section 21. Section **63J-4a-501** is enacted to read:

1035 **Part 5. Reporting**

1036 **63J-4a-501. Duty to report potential Medicaid fraud to the office or fraud unit.**

1037 (1) A health care professional, a provider, or a state or local government official or

1038 employee who becomes aware of fraud, waste, or abuse shall report the fraud, waste, or abuse
1039 to the office or the fraud unit.

1040 (2) A person who makes a report under Subsection (1) may request that the person's
1041 name not be released in connection with the investigation.

1042 (3) If a request is made under Subsection (2), the person's identity may not be released
1043 to any person or entity other than the office, the fraud unit, or law enforcement, unless a court
1044 of competent jurisdiction orders that the person's identity be released.

1045 Section 22. Section **63J-4a-502** is enacted to read:

1046 **63J-4a-502. Report and recommendations to governor and Executive**
1047 **Appropriations Committee.**

1048 (1) The inspector general shall, on an annual basis, prepare a written report on the
1049 activities of the office for the preceding fiscal year.

1050 (2) The report shall include:

1051 (a) non-identifying information, including statistical information, on:

1052 (i) the items described in Subsection 63J-4a-202(1)(b) and Section 63J-4a-204;

1053 (ii) action taken by the office and the result of that action;

1054 (iii) fraud, waste, and abuse in the state Medicaid program;

1055 (iv) the recovery of fraudulent or improper use of state and federal Medicaid funds;

1056 (v) measures taken by the state to discover and reduce fraud, waste, and abuse in the
1057 state Medicaid program;

1058 (vi) audits conducted by the office; and

1059 (vii) investigations conducted by the office and the results of those investigations;

1060 (b) recommendations on action that should be taken by the Legislature or the governor

1061 to:

1062 (i) improve the discovery and reduction of fraud, waste, and abuse in the state

1063 Medicaid program;

1064 (ii) improve the recovery of fraudulently or improperly used Medicaid funds; and

1065 (iii) reduce costs and avoid or minimize increased costs in the state Medicaid program;

- 1066 (c) recommendations relating to rules, policies, or procedures of a state or local
 - 1067 government entity; and
 - 1068 (d) services provided by the state Medicaid program that exceed industry standards.
 - 1069 (3) The report described in Subsection (1) may not include any information that would
 - 1070 interfere with or jeopardize an ongoing criminal investigation or other investigation.
 - 1071 (4) The inspector general shall provide the report described in Subsection (1) to the
 - 1072 Executive Appropriations Committee of the Legislature and to the governor on or before
 - 1073 October 1 of each year.
 - 1074 (5) The inspector general shall present the report described in Subsection (1) to the
 - 1075 Executive Appropriations Committee of the Legislature before November 30 of each year.
- 1076 Section 23. Section **63J-4a-601** is enacted to read:

Part 6. Miscellaneous Provisions

63J-4a-601. Provision of contract services to Office of Inspector General of Medicaid Services.

- 1080 (1) The division and the assistant attorneys general assigned to the division shall
- 1081 provide, without charge, contract review, contract enforcement, and other contract management
- 1082 services to the office.
- 1083 (2) The division shall ensure that the services described in Subsection (1) are provided
- 1084 in an expeditious manner.
- 1085 (3) The attorney general shall designate one of the assistant attorneys general assigned
- 1086 to the division to give first priority to providing the services described in Subsection (1) to the
- 1087 office.
- 1088 (4) The office and the division shall enter into a memorandum of understanding in
- 1089 order to execute the requirements of this section in an effective and efficient manner.

1090 Section 24. Section **63J-4a-602** is enacted to read:

63J-4a-602. Rulemaking authority.

1091 The office may make rules, pursuant to Title 63G, Chapter 3, Utah Administrative

1092 Rulemaking Act, that establish policies, procedures, and practices, in accordance with the

1093

1094 provisions of this chapter, relating to:

1095 (1) inspecting and monitoring the state Medicaid Program;

1096 (2) discovering and investigating potential fraud, waste, or abuse in the State Medicaid
1097 program;

1098 (3) developing and implementing the principles and standards described in Subsection
1099 63J-4a-202(1)(p);

1100 (4) auditing, inspecting, and evaluating the functioning of the division under
1101 Subsection 63J-4a-202(1)(h);

1102 (5) conducting an audit under Subsection 63J-4a-202(1)(h) or (2); or

1103 (6) ordering a hold on the payment of a claim for reimbursement under Section
1104 63J-4a-205.

1105 **Section 25. Appropriation.**

1106 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the
1107 following sums of money are appropriated from resources not otherwise appropriated out of the
1108 funds or accounts indicated for the fiscal year beginning July 1, 2011, and ending June 30,
1109 2012. These are additions to amounts previously appropriated for fiscal year 2012.

1110 Item 1 To Department of Health - Executive Director's Operations

1111 From General Fund \$(694,900)

1112 From Federal Fund \$(1,037,000)

1113 From Revenue Transfers - Within Agency \$(81,500)

1114 Schedule of Programs:

1115 Internal Audit and Program Integrity \$(1,813,400)

1116 Item 2 To Medicaid Mandatory Services

1117 From General Fund \$(300,000)

1118 From Federal Fund \$(519,100)

1119 Schedule of Programs:

1120 Other Mandatory Services \$(819,100)

1121 Item 3 To Office of Inspector General of Medicaid Services

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1122	<u>From General Fund</u>	<u>\$994,900</u>
1123	<u>From Federal Fund</u>	<u>\$1,556,100</u>
1124	<u>From Revenue Transfers - Health</u>	<u>\$81,500</u>
1125	<u>Schedule of Programs:</u>	
1126	<u>Office of Inspector General of Medicaid Services</u>	<u>\$2,632,500</u>
1127	Section 26. Effective date.	
1128	<u>This bill takes effect on July 1, 2011.</u>	